

THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495-JHC

JOINT STATUS REPORT

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Pursuant to the February 13, 2024 Case Management Order (“CMO”), Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York, Connecticut, New Hampshire, Oklahoma, Oregon, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Puerto Rico, Rhode Island, Vermont, and Wisconsin, by and through their respective Attorneys General (together, “Plaintiff States,” and collectively with the FTC, “Plaintiffs”) and Defendant Amazon.com, Inc. (“Amazon”) submit this joint status report in advance of the parties’ September 3, 2024 status conference with the Court.

This status report is organized as follows: the parties provide brief preliminary statements beginning at page 4. Plaintiffs’ Report on the Status of Discovery begins at page 8. Amazon’s Report on the Status of Discovery begins at page 27. The parties provide a list of pending motions at page 44.

I. PRELIMINARY STATEMENTS

A. Plaintiffs’ Preliminary Statement

The parties are now nearly halfway through the fact discovery period set by the Court, but many of the concerns that Plaintiffs raised in the last joint status report about the progress of discovery remain. *See* Dkt. #246. As of the parties’ June 3, 2024 status report, Amazon had produced approximately 650 documents specific to this litigation. Three months later, that number is **2,919 documents**. Amazon says that “[d]iscovery is proceeding at an appropriate pace given the scope of the material at issue and the sheer volume of requests and demands Plaintiffs have made.” Plaintiffs disagree.

Amazon continues to drag out discovery through a combination of piecemeal disclosures, groundless objections, and delayed responses. Plaintiffs are working diligently to pursue evidence relevant to their claims and address Amazon’s purported concerns, and in some areas

1 have made progress. But Amazon’s overall approach—as well as its refusal to commit to interim
2 discovery deadlines—threatens to derail the discovery schedule set by the Court.

3 Notwithstanding Amazon’s unfounded objections about the breadth of Plaintiffs’
4 requests, Plaintiffs are seeking discovery entirely commensurate with the scale and significance
5 of this case. *See* Dkt. #246 at 5 (providing examples of antitrust cases where document discovery
6 encompassed millions of documents). Amazon is one of the largest, most technically
7 sophisticated companies in the world and is more than capable of timely complying with
8 Plaintiffs’ discovery requests. Instead, on multiple fronts, progress has been halting. Even the
9 most basic requests—such as Amazon reproducing documents already produced in Related
10 Cases or identifying the members of its Senior Leadership Team—have frequently devolved into
11 months- or weeks-long slogs. Amazon has also slowed the pace of discovery by continuing to
12 lodge meritless objections to Plaintiffs’ requests. In some cases, Amazon eventually dropped its
13 objections only when faced with the threat of an imminent motion to compel or joint status report
14 filing. But in other cases, Amazon continues to draw out disputes with unfounded and
15 unnecessary objections.

16 Many, but not all, of the parties’ disputes over document requests have now collapsed
17 into a broader negotiation regarding the scope of Amazon’s collection, search, and review of
18 documents. That process is likewise proceeding slowly. Amazon’s positions on the protocol for
19 Technology Assisted Review (“TAR”), search terms, document custodians, and relevant date
20 ranges mean that nearly halfway into fact discovery, Amazon has not yet begun producing
21 custodial documents in this case and has not committed to a timeline for doing so.¹

22 Plaintiffs respectfully request the Court’s assistance to ensure that discovery stays on

23 ¹ As explained in the last status report to the Court, Plaintiffs have already produced hundreds of
24 thousands of documents to Amazon. *See* Dkt. #246 at 3-4.

1 track. As outlined below, Plaintiffs ask the Court to take certain steps now, including the
2 imposition of interim discovery deadlines and increasing the cadence of the parties' regular
3 status conferences, that will help push the parties along. Plaintiffs also ask the Court to resolve
4 specific discovery disputes now, or at minimum provide guidance to assist the parties with the
5 resolution of these disputes.

6 **B. Amazon's Preliminary Statement**

7 Discovery is proceeding at an appropriate pace given the scope of the material at issue
8 and the sheer volume of requests and demands Plaintiffs have made. Since the last status
9 conference, Amazon has:

- 10 • produced well over *half a million* more documents (on top of the 1.7 million produced in
11 the investigation and "deemed produced" here) and dozens of terabytes of data;²
- 12 • responded to interrogatories issued by Plaintiffs;
- 13 • answered two dozen letters from Plaintiffs containing many more informal demands for
14 information;
- 15 • and conferred around two dozen times with Plaintiffs.

16 Additionally, the parties have made substantial progress on negotiating the scope of Amazon's
17 responsive discovery, and they are well-positioned to continue to work together on reaching
18 agreement on search terms and custodians.

19 It is therefore disappointing to see Plaintiffs use the Joint Status Report to paint a
20 misleading picture of the parties' interactions in discovery, particularly while Plaintiffs seek
21 Court intervention on items (1) they have already received, (2) Amazon has agreed to provide,
22

23 ² As Amazon explains below, Plaintiffs' focus on the number of documents produced in response
24 to specific targeted requests for information while ignoring the hundreds of thousands of
documents Amazon has produced is not an appropriate measure of the parties' progress.

1 and/or (3) for which they have backtracked on the parties' progress and refused to negotiate.
2 Amazon believes that a case like this works best when the parties work together to resolve issues
3 and move past them. Amazon would prefer to use these Joint Status Reports to update the Court
4 on the progress of the case and seek guidance if useful—not to describe for the Court already-
5 resolved disputes. But because Plaintiffs have painted a picture of the parties' interactions that is
6 missing key context, Amazon feels compelled to provide that context. Amazon has attempted to
7 provide that context as succinctly as practical.

8 Plaintiffs have served nearly 400 separate requests for production and proposed that
9 1,100 search terms, including facially overbroad stand-alone terms like "Microsoft" and "Jesus,"
10 be applied to nearly 150 custodians over a period of a decade. Amazon has been diligently
11 producing documents, responding to dozens of letters containing many more questions and
12 informal requests for information, and since the last status conference has engaged in tens of
13 hours of meet and confers covering scores of issues. In light of that context, it is not reasonable
14 for Plaintiffs to complain to the Court about the pace of discovery without acknowledging the
15 role their approach to discovery has played in that process.

16 Below, Amazon discusses in more detail the status of discovery and the parties' efforts.
17 With respect to Plaintiffs' disputes, Amazon responds to each in turn and respectfully requests
18 that the Court deny Plaintiffs' requests as (1) unnecessary (more frequent status conferences,
19 non-custodial ESI sources), (2) premature (interim discovery deadlines), or (3) unwarranted
20 (personnel reviews and discovery correspondence).

21 **II. STATUS OF LITIGATION**

22 Plaintiffs filed the Complaint on September 26, 2023, Dkt. #1, and filed an Amended
23 Complaint adding Puerto Rico and Vermont as Plaintiffs on March 14, 2024, Dkt. #170. Amazon
24 filed a motion to dismiss the Complaint on December 8, 2023, Dkt. #127, which the parties

1 agreed and the Court ordered would be deemed to be Amazon's motion to dismiss the Amended
 2 Complaint, Dkt. #175. That motion has been fully briefed. *See* Dkt. #178. Plaintiffs have filed
 3 two notices of supplemental authority. *See* Dkt. ##267, 272. Amazon has objected to the first of
 4 those notices. *See* Dkt. #271.

5 On February 13, 2024, the Court issued a Case Scheduling Order, Dkt. #159, that
 6 included the following key dates:

7	August 8, 2025	Close of Fact Discovery
8	February 23, 2026	Close of Expert Discovery
9	April 6, 2026	Deadline to File Dispositive and <i>Daubert</i> Motions
10		(with motions noted for June 15, 2026)
11	September 28, 2026	Final Pretrial Conference
12	October 13, 2026	Bench Trial

13 The parties have been engaged in fact discovery for approximately ten months.
 14 Approximately eleven months remain before the scheduled close of fact discovery.

15 **III. PLAINTIFFS' REPORT ON THE STATUS OF DISCOVERY**

16 **A. Amazon's Discovery Responses and Productions**

17 Plaintiffs have issued four sets of document and data requests to Amazon, the last of
 18 which was served shortly after the June 6, 2024 status conference.³ Following many months of
 19 negotiations, Amazon has begun to make some progress on Plaintiffs' discovery requests. The

21 ³ Plaintiffs served their First Set of Requests for Production of Documents on November 14,
 22 2023, and Amazon served its Responses and Objections on December 14, 2023. Plaintiffs served
 23 their Second and Third Sets of Requests for Production of Documents on February 1, 2024, and
 24 Amazon served its Responses and Objections on March 25, 2024, pursuant to an extension of
 time agreed to by the parties. Plaintiffs served their Fourth Set of Requests for Production of
 Documents on June 28, 2024, and Amazon served its Responses and Objections on July 29,
 2024. Plaintiffs have also served two sets of interrogatories on Amazon, which Amazon has
 objected to and responded to in part.

1 vast majority of the documents Amazon has produced to date, however, are reproductions of
2 materials Amazon has produced in the *California* Action or Related Cases. Apart from those
3 reproductions, Amazon has produced **2,919 documents**, a tiny fraction of what will be produced
4 in this case—and of what needs to be produced before the parties can move forward with
5 depositions of Amazon witnesses and key third parties.

6 At this point, the parties' primary disputes concern the timing of Amazon's document
7 production, the scope of Amazon's collection, search, and review of documents, its use of TAR,
8 and the date range for relevant documents. The parties are also continuing to meet and confer
9 regarding Amazon's substantive objections to Plaintiffs' document requests. Plaintiffs are
10 hopeful that the parties will soon resolve their remaining disputes or reach a point where those
11 disputes are ripe for motions to compel. However, the Court should be aware that Amazon has
12 engaged in an ongoing pattern of obstruction and delay that will derail the discovery schedule if
13 it is left unchecked.

14 Amazon has repeatedly raised objections that are patently unreasonable, forcing Plaintiffs
15 to unnecessarily expend considerable time and resources—and in some cases, preparing to file
16 motions to compel. To give just one example, as Plaintiffs noted in their last status report,
17 Amazon refused to produce documents regarding two of Amazon's fulfillment-related
18 programs—Supply Chain by Amazon and Buy with Prime—that interconnect with and
19 encompass Amazon's core Fulfillment by Amazon offering. *See* Dkt. #246 at 12-14. Amazon
20 maintained categorical objections to searching for and producing documents relating to either
21 program for over six months, through dozens of meet and confers and letter exchanges. Amazon
22 only relented and agreed to produce documents relating to Supply Chain by Amazon and Buy
23 with Prime—programs that Amazon now acknowledges “sit[] within” and “encompass[]” the
24

1 fulfillment programs at issue that are “relevant to Plaintiffs’ claims”—after Plaintiffs informed
2 Amazon they would seek relief from the Court.

3 Amazon has also routinely raised objections, including undue burden objections, based
4 on little or no due diligence. For example, Amazon objected to Plaintiffs’ request for all final
5 agreements between Amazon and fulfillment and delivery providers, on the grounds it was
6 unduly burdensome. Plaintiffs noted that any such agreements were likely in a centralized
7 repository that could be readily collected. Amazon then represented that it had not even
8 investigated whether any such central repository existed. In other words, its purported burden
9 objection was speculative and made without any reasonable investigation. In another example,
10 several of Plaintiffs’ requests for production seek information about Amazon’s Multichannel
11 Fulfillment service “or other Amazon ecommerce fulfillment services.” It took over three months
12 for Amazon to “investigate” the services it offers and to identify another fulfillment service, and
13 at one point Amazon took the position that “it is not Amazon’s duty . . . to do the FTC’s
14 homework of identifying whether ‘other Amazon ecommerce fulfillment services’ exist.” The
15 additional service identified by Amazon is relevant to Plaintiffs’ case, and Plaintiffs proposed
16 search terms relating to it more than a month ago. As of this joint status report, Plaintiffs do not
17 know if Amazon is objecting to those search terms.

18 Finally, Amazon has repeatedly delayed its responses to Plaintiffs’ attempts to move
19 discovery negotiations forward. For example, on August 5, Plaintiffs informed Amazon that they
20 were waiting for responses on *eight* outstanding letters regarding RFP negotiations, three of
21 which had been outstanding for more than 30 days. Amazon finally provided responses on
22 August 16.

23 Taken together, these issues help explain how it is possible that Amazon has only
24 produced a few thousand documents unique to this case, after almost ten months of fact

1 discovery. Looking forward, Plaintiffs are seriously concerned that if Amazon continues this
2 approach during the parties' ongoing negotiations regarding search methodology, it will derail
3 the discovery and trial schedule set by the Court, or that Amazon will leverage its own strategic
4 delays to limit the scope of discovery produced to Plaintiffs. As discussed further below,
5 Plaintiffs respectfully request that the Court order interim discovery deadlines and step up the
6 cadence of status conferences to ensure that the parties are making progress in discovery and
7 staying on track with the Court's schedule.

8 While the parties are continuing to discuss search methodology issues, Plaintiffs believe a
9 brief overview of the parties' current disputes may be useful background for the Court:

10 ***Technology Assisted Review.*** Plaintiffs initiated discussions regarding Amazon's
11 potential use of TAR in May, and since then the parties have had ongoing discussions regarding
12 a TAR protocol. Properly used, TAR should allow Amazon to expedite its production of
13 responsive documents. Because a properly-used TAR system should be able to effectively
14 separate out potentially responsive documents from non-responsive documents without
15 individualized review of each document, TAR can also alleviate the need for the parties to spend
16 an extended amount of time negotiating search terms, which can unnecessarily delay the
17 document production process.

18 The principal dispute between the parties is whether Brainspace, Amazon's proposed
19 TAR platform, can accommodate more than 9 million documents. Amazon's counsel claims that
20 Brainspace will become unstable when used with more than 9 million documents, based on their
21 experience and the experience of Amazon's e-discovery vendor Consilio. Plaintiffs'
22 understanding, based on the experience of their e-discovery experts, discussions with Brainspace,
23 and publicly available literature from Relativity, is that Brainspace *can* accommodate more than
24 9 million documents, and have proposed several suggested approaches to do so. Plaintiffs are

1 hopeful that the parties can reach a mutually agreeable resolution of this issue, but do not believe
 2 that Amazon should be permitted to unilaterally set a cap on the number of documents it will
 3 review based on claimed technological limitations. Large, complex cases such as this often
 4 involve the review of more than 9 million documents.⁴ Amazon is one of the world's leading
 5 data management companies, and is represented in this case by five top-tier law firms. It is hard
 6 to believe Amazon cannot find a way to work around any purported limitations of its chosen
 7 TAR platform.

8 ***Search Terms.*** The parties exchanged initial search term proposals on July 22. Plaintiffs
 9 subsequently sent Amazon revised search term proposals on July 29 and August 2 that
 10 incorporated some of the search terms proposed by Amazon and addressed some syntax issues
 11 identified by Amazon. Plaintiffs' view is that if Amazon uses search terms to collect documents
 12 (as Amazon insists on doing), search terms should be deployed to collect substantially all
 13 documents that may be responsive to Plaintiffs' discovery requests, and that Amazon's use of
 14 TAR will address any undue burden concerns.

17 ⁴ For example, in the pending *Google AdTech* case, Google reviewed more than 12 million
 18 documents. *See* Status Report, *United States v. Google*, 1:23-cv-00108, Dkt. #467 (E.D. Va.
 19 Sept. 29, 2023) (representing that Google was reviewing 6.4 million unique documents from set
 20 of 16.1 million documents Google initially failed to ingest into Google's review platform); *id.*
 21 Dkt. #422 (representing that before this issue was identified, Google had already reviewed 6
 22 million documents); *see also* Def.'s Response in Opposition to Motion for Extension of
 23 Discovery Deadlines, *In re Domestic Airlines Travel Antitrust Litigation*, 1:15-mc-1404, Dkt.
 24 #276 (D.D.C. Aug. 30, 2018) (one defendant in a multi-defendant case representing that it had a
 universe of over 18 million non-duplicative documents); *Gabriel Technologies Corporation v. Qualcomm Inc.*, Case No. 09-cv-1992 (2013 WL 410103, at *10 (S.D. Cal. Feb. 1, 2013)
 (describing "computer assisted, algorithm-driven document review" for almost 12 million
 documents); Lighthouse Document Technologies, Streamlining Document Review for DOJ
 Antitrust Division Compliance, <https://www.lighthouseglobal.com/case-study/streamlining-document-review-for-doj-antitrust-division-compliance#> (describing the use of TAR to review
 21 million documents in connection with a merger review) (last visited Aug. 26, 2024).

1 Since the parties first exchanged search terms proposals, Plaintiffs have consistently told
2 Amazon that they are willing to consider any undue burden objections supported by unique
3 search term hit reports. Until August 26, Amazon refused to provide any hit reports, including hit
4 reports it had already run, and insisted that hit reports were unnecessary as recently as an August
5 22 meet and confer. Amazon finally agreed on August 26 that it would provide hit reports, and
6 represented on August 28 that those reports would include unique hit counts, but as of this filing
7 Plaintiffs have not received any hit reports. Without unique hit counts, Plaintiffs cannot assess or
8 respond to Amazon's undue burden claims. While Plaintiffs look forward to assessing Amazon's
9 undue burden claims once they receive hit reports with unique hit counts, Amazon's month-plus
10 refusal to provide them has caused an unnecessary delay in search term negotiations.⁵

11 ***Custodians.*** On June 20, Amazon proposed an initial list of 54 custodians. That list
12 omitted many plainly relevant custodians, including Amazon CEO Andy Jassy. On July 25,
13 Plaintiffs responded with a proposed list of 148 custodians. Plaintiffs reserved their rights to
14 supplement their custodian proposal based on information Amazon provides in responses to
15 Plaintiffs' questions about employees' roles and responsibilities, or other information Amazon
16 produces in discovery. The parties continue to meet and confer.

17 Amazon's delay and unwillingness to provide basic information about its employees have
18 contributed to delays in custodial negotiations. For example, Plaintiffs asked Amazon for a list of
19 current and former members of its Senior Leadership Team (S-Team) on July 10. Amazon
20 provided an initial list that had several obvious omissions on August 5, and then a (presumably)
21 final list of S-Team members on August 16, more than a month after Plaintiffs requested this

22 ⁵ Amazon's refusal conflicted with its prior representation to the Court, in its opposition to
23 Plaintiffs' proposal to mandate hit count reports in the ESI Order, that "Amazon is willing to
24 have the parties substantiate the associated burdens [of search terms] by exchanging hit reports
showing counts of documents returned by the terms." Dkt. #191 at 10.

1 basic information. For more than a month, Amazon similarly refused to provide crucial
2 information about who has responsibility for key programs within Amazon, describing Plaintiffs’
3 questions as akin to interrogatories. At the same time, Amazon questioned why Plaintiffs require
4 custodians beyond those proposed by Amazon and challenged the relevance of Plaintiffs’
5 additional proposed custodians. As Amazon itself has explained to Plaintiffs when discussing the
6 need for predecessor and successor custodians, job titles do not necessarily reflect employees’
7 responsibilities. Providing information about company employees with key responsibilities is a
8 fundamental tenet of good faith custodian negotiations. Plaintiffs have struggled to get this
9 information from Amazon and cannot realistically move forward in custodian negotiations
10 without it.

11 ***Date Range.*** As Plaintiffs noted in the parties’ last joint status report, the parties continue
12 to disagree about the default date range for discovery. *See* Dkt. #246 at 14-15. Plaintiffs maintain
13 that, as a default, Amazon should produce documents from January 1, 2014 through the date of
14 collection from each custodian or non-custodial source, provided that date is after March 25,
15 2024 (when Amazon served its responses and objections to Plaintiffs’ Second and Third Sets of
16 Requests for Production of Documents). As Plaintiffs have repeatedly explained to Amazon, the
17 allegations in the Amended Complaint make clear that much of Amazon’s alleged
18 anticompetitive conduct, or discussions and development that underlie that conduct dates back to
19 at least 2014. *See, e.g.*, Dkt. #170, ¶¶ 92, 231 (alleging Amazon launched its advertising business
20 in 2014), ¶¶ 274-75 (alleging from 2011 until 2019, Amazon required each seller to maintain
21 price parity), ¶ 364 (Mr. Bezos described FBA as “glue that inextricably links Marketplace and
22 Prime” in 2014), ¶ 421 (alleging Amazon began monitoring other online stores’ pricing
23 algorithms in early 2010s). A timeframe beginning at the start of 2014 is therefore relevant to
24 understanding the “origin, background, and purpose of [Amazon’s] alleged anticompetitive

conduct.” *See Rumble, Inc. v. Google LLC*, 2023 WL 3751797, at *5 (N.D. Cal. May 31, 2023);
 see also *Sidibe v. Sutter Health*, 103 F.4th 675, 685-86 (9th Cir. 2024) (relevant factors include
 “the history of the restraint” and “the reasons for adopting the particular practice”); *Cyntegra,
 Inc. v. IDEXX Labs., Inc.*, 2007 WL 9701999, at *4-5 (C.D. Cal. June 29, 2007) (“In antitrust
 cases, courts have allowed liberal discovery.”).

Amazon’s position has shifted since the parties’ last joint status report. *See* Dkt. #246 at
 14-15. Amazon is currently proposing a default time period from January 1, 2016, through a
 single, yet to be determined date after the filing of the Complaint for custodial collections, with a
 potentially narrower default range for certain targeted collections. Amazon first proposed this
 default time period on August 8, after eight months of negotiations. Prior to August, Amazon
 refused to move from its initial position of January 1, 2018 through September 26, 2023, a
 position it supported with nothing more than “blanket objection[s] without specifics.” *In re ATM
 Fee Antitrust Litig.*, 233 F.R.D. 542, 545 (N.D. Cal. 2005). Indeed, it was not until a meet and
 confer on August 22 that Amazon clearly articulated a purported basis for its relevance objection
 to Plaintiffs’ proposed start date.

B. Disputes Regarding Amazon’s Discovery Responses and Productions

While the parties have made incremental progress on various fronts since the June 6,
 2024 status conference, Plaintiffs believe that a ruling from the Court on five specific issues
 would be helpful—and for the first three issues, is *necessary*—to keep discovery moving forward
 and on track with the case schedule set by the Court. Plaintiffs respectfully request that the Court
 (1) set interim discovery deadlines, including a deadline for Amazon to substantially complete its
 document productions by January 15, 2025; (2) increase the cadence of status conferences to
 hold a conference every two months, at least through the close of fact discovery; and (3) confirm
 Amazon’s obligations to diligently investigate, disclose, and search non-custodial document

1 repositories. Plaintiffs also ask that the Court (4) compel Amazon to produce personnel reviews,
2 evaluations, and promotion materials from Amazon's central repository; and (5) compel Amazon
3 to produce discovery correspondence from the *California* Action and Related Cases and
4 reproduce all documents produced in the *California* Action or Related Cases on a rolling basis
5 within one week of their initial production. Finally, if the Court is still inclined to hold an
6 Economics Day, as the Court proposed at the June 6, 2024 status conference, Plaintiffs request
7 that the Court adopt Plaintiffs' proposal regarding the scope and protocol for that hearing and
8 schedule the hearing for October or November 2024.

9 **1. Interim Discovery Deadlines**

10 Plaintiffs previously proposed interim discovery deadlines to help ensure that the parties
11 make meaningful discovery progress and stay on track with the deadlines ultimately set by the
12 Court. *See, e.g.*, Dkt. #135 at 12-13 (Dec. 15, 2023 JSR); Dkt. #135-1 at 2-3 (Plaintiffs'
13 Proposed Case Management Order, including interim deadlines for the substantial completion of
14 document discovery). While the Court did not order those deadlines at the outset of discovery,
15 the parties' experience to date and the slow pace of discovery shows that interim deadlines are
16 necessary now.

17 Without interim discovery deadlines, negotiations over the scope of Plaintiffs' document
18 requests have taken half a year or more. Now the parties' negotiations over search methodology,
19 non-custodial sources, and the date range for discovery seem poised to last just as long, if not
20 longer. Even where Amazon has agreed to produce responsive information, it has generally
21 refused to commit to any timeline. For example, Amazon has cited the lack of negotiation
22 progress in refusing to commit to (or so far, to even discuss) a deadline by which it will
23 substantially complete its production of custodial documents. Further delays in Amazon's
24

1 compliance with Plaintiffs' document requests could in turn delay the depositions of Amazon
2 witnesses and key third parties, and risk derailing the Court's existing case schedule.

3 In July, Plaintiffs told Amazon that the parties should set milestones for document
4 collection and review to ensure that the parties were making progress in line with the Court's
5 schedule. Plaintiffs explained that Amazon should produce documents on a rolling basis and
6 substantially complete its document production by the end of 2024 to ensure that the parties
7 could move forward with depositions and conduct any necessary follow-up discovery in 2025.
8 Among other deadlines, Plaintiffs proposed that Amazon begin its document review by
9 September 3, 2024, and produce documents on a rolling basis, with productions every two
10 weeks, and that Amazon should substantially complete its document production no later than
11 December 20, 2024. Amazon objected to those milestones but was not willing to provide a
12 counter-proposal.

13 To keep discovery moving, Plaintiffs respectfully request that the Court order that:

- 14 • Amazon must begin its custodial document review no later than **September 23,**
15 **2024.** To the extent the parties have been unable to reach an agreement by this
16 date regarding Amazon's search methodology (including TAR, custodians, search
17 terms, non-custodial sources, or date ranges), Amazon must start its review based
18 on its last proposal(s). Plaintiffs will submit any remaining disputes to the Court
19 for resolution promptly and within seven days of reaching an impasse.
 - 20 • Amazon must produce documents on a rolling basis, with substantial productions
21 at least every two weeks beginning on **October 14, 2024.**
 - 22 • Amazon must substantially complete its production of documents no later than
23 **January 15, 2025,** except as agreed upon by the parties.
- 24

2. Timing of Status Conferences

To ensure that disputes can be brought to the Court's attention and resolved quickly, Plaintiffs have previously proposed holding status conferences every two months, rather than quarterly, through the completion of fact discovery. *See* Dkt. #135 at 10; *see also* June 6, 2024, Hr'g Tr. 11:14-25. Given the current state of discovery and ongoing issues with Amazon's pace in complying with its discovery obligations, Plaintiffs again request that the Court amend its scheduling order to provide for bimonthly status conferences, beginning in early November 2024. During the lead-up to both this status conference and the June 6, 2024 status conference, the parties made significant progress on key discovery issues that had previously stalled, demonstrating that increasing the frequency of status conferences should speed the pace of discovery.⁶ Holding status conferences more frequently may also allow the Court to resolve some disputes that would otherwise delay discovery or require full motion briefing.

3. Obligation to Identify and Search Non-Custodial Repositories

Throughout the parties' discovery negotiations, Amazon has consistently failed in its obligation to investigate, identify, and disclose the existence of non-custodial document repositories (e.g., documents stored not with specific individuals but on shared sources such as network shared drives or databases). Under the Court's ESI order, Amazon was required to disclose a "list of non-custodial data sources (e.g., shared drives, servers), if any, likely to

⁶ For example, with respect to Amazon's production of structured data, although Plaintiffs served their data-related requests over six months ago, it was not until the preparation of this joint filing that Amazon agreed to provide estimated completion dates for all of the data requests in Plaintiffs' Third Set of Requests for Production. Plaintiffs understand that Amazon's dataset production timelines will include production dates on a rolling basis, as required by the Court's Case Management Order (Dkt. #161, 2.c.) and that Amazon will provide data samples or data fields and definitions, where appropriate, to allow for streamlined, good-faith negotiations. The parties also made significant progress on data discovery and several other issues in conjunction with the June 6, 2024 status conference.

1 contain discoverable ESI” no later than June 25, 2024. *See* Dkt. 256 at 2. Amazon’s June 20 ESI
2 Disclosures simply referred Plaintiffs to a February 22 letter in which, after objecting to
3 relevance, Amazon provided an incomplete high-level description of sources of discoverable ESI
4 in response to one of Plaintiffs’ requests for production. That list is so high-level that it is
5 functionally useless as a basis for negotiations.

6 Amazon finally agreed on August 23, in the lead-up to this status conference, that it
7 would provide a full list of sources of responsive material beyond an individual custodian’s files,
8 and, when collecting from shared drives and the like, it will search for and produce from files
9 where custodians had *access*, not merely where custodians created or edited documents. While
10 there is some disagreement between the parties about whether shared drives and similar
11 repositories are custodial or non-custodial, Plaintiffs are not concerned with whether something
12 is designated as custodial or noncustodial as long as the relevant sources are disclosed and the
13 scope of the search is clear.

14 Plaintiffs are concerned, however, that when they have repeatedly identified various
15 sources of Amazon’s own information to Amazon, in response, Amazon has taken over a month
16 to investigate those sources (which it should have already investigated as part of its due
17 diligence), only to ultimately provide piecemeal responses that often do not withstand scrutiny.
18 For example, Plaintiffs sent Amazon a letter on July 8 inquiring about Amazon’s “Kingpin”
19 database, which Amazon witnesses testified about during Plaintiffs’ pre-Complaint investigation
20 as containing information about Senior Leadership Team business goals. Amazon did not
21 disclose Kingpin in its ESI disclosures and then, after receiving the aforementioned letter spent
22 over a month purportedly investigating Kingpin. When Amazon ultimately responded, it said that
23 the witness identified did not have fulfillment-related responsibilities, and Plaintiffs had only
24 asked about Kingpin in connection with the fulfillment aspect of the case. Plaintiffs have since

1 located documents showing that Kingpin is used by fulfillment teams to track S-Team goals, and
2 that it contains responsive information related to other aspects of the case. Amazon still has not
3 committed to searching Kingpin for responsive documents.

4 It is Amazon's obligation to identify non-custodial sources of information that are likely
5 to contain information responsive to Plaintiffs' document requests. Amazon is currently forcing
6 *Plaintiffs* to identify non-custodial sources on a piecemeal basis, even though Amazon plainly
7 has superior information about what information it has and where that information is stored.
8 When Plaintiffs are able to identify specific sources, Amazon typically argues that those sources
9 are not relevant, based on the information identified by Plaintiffs, but does not share the results
10 (if any) of its own investigations.⁷

11 Plaintiffs are willing to negotiate regarding any specific objections Amazon may have to
12 searching particular repositories, but any such negotiations depend on Amazon conducting a
13 diligent search for non-custodial repositories (which only Amazon can do), fully disclosing the
14 nature of the repositories to Plaintiffs, and identifying any specific reasons why Amazon
15 contends it should be excused from its obligation to conduct a reasonable search for responsive
16 documents.

17 Plaintiffs accordingly respectfully request that the Court:
18
19

20 ⁷ Kingpin is not the only example. For example, Plaintiffs have also had to affirmatively inquire
21 about the SAINT (Seller Anecdote and Insight Narrowing Tool) system, which is a tool allowing
22 Amazon employees to access the result of feedback provided by sellers on Amazon. That
23 feedback includes sellers' dissatisfaction with FBA, sellers' desires to diversify to other
24 channels, and sellers' fears regarding Amazon's anti-discounting programs. Amazon has refused
to commit to producing files from SAINT. While Amazon claims SAINT has been "deprecated,"
it has not denied that it can still retrieve responsive information from this system. Given that
SAINT only launched in 2020, and the fact that Amazon has been subject to litigation holds
since then, Plaintiffs would be concerned if this system no longer exists.

- 1 • Confirm that Amazon must conduct a diligent search for non-custodial sources
2 (including centralized repositories and shared drives) that may contain documents
3 responsive to Plaintiffs' discovery requests, and that Amazon must conduct a
4 reasonable search of those non-custodial sources for documents responsive to
5 Plaintiffs' discovery requests;
- 6 • Order Amazon to produce, no later than September 17, 2024, a list of non-custodial
7 sources (including centralized repositories and shared drives) likely to contain
8 discoverable ESI, at a level of detail that will allow the parties to meaningfully
9 discuss Amazon's collection, review, and production of documents from non-
10 custodial sources;
- 11 • Order Amazon to supplement that disclosure on a rolling basis, no later than five days
12 after identifying any non-custodial sources that may contain documents responsive to
13 Plaintiffs' discovery requests;
- 14 • Order Amazon to promptly provide Plaintiffs with information (starting no later than
15 September 17, 2024, and continuing on a rolling basis) regarding (a) what Amazon
16 has done so far to search for non-custodial sources; (b) what Amazon is continuing to
17 do to search for non-custodial sources; (c) what non-custodial sources Amazon is
18 searching or commits to search for responsive documents; and (d) how Amazon is
19 conducting those searches; and
- 20 • Order Amazon, to the extent it is objecting to searching any non-custodial sources, to
21 promptly identify specific objections as to why it should not have to search those
22 repositories.

4. Personnel Reviews

In the parties' last joint status report, Plaintiffs flagged that Amazon was refusing to produce personnel reviews, evaluations, and promotion materials concerning individuals with responsibilities relating to the conduct described in the Complaint.⁸ *See* Dkt. #246 at 11. These materials are highly relevant, including because they can identify relevant company goals (for example, regarding Amazon's pricing strategies at issue in this case), a specific employee's acts to further those goals, and Amazon's progress in achieving those goals, with significant discussion of the relevant markets and Amazon's conduct in them. *See id.*

While Amazon has confirmed that a central repository exists for these documents, Amazon's position to date has been that it will only produce personnel reviews if they happen to turn up in the course of searching a particular custodian's files. Amazon has maintained this position even though it has admitted that individual employees do not have access to their own personnel review, evaluation, and promotion materials, which means that any custodial collection will be incomplete.⁹

⁸ Plaintiffs' RFP No. 32 calls for: "All Documents relating to personnel reviews, evaluations, and promotion materials (whether in draft or final form) concerning individuals with responsibilities relating to the conduct described in the Complaint" As noted here, Plaintiffs are willing to narrow the scope of that request to the custodians agreed upon by the parties or ordered by the Court.

⁹ Amazon states that Plaintiffs will receive relevant personnel reviews in custodial files but does not address the fact that custodians do not have access to their own personnel review, evaluation, and promotion materials. For example, Amazon "confirmed in writing" that personnel materials will be included in productions of custodial files, and it identified a promotion request that was produced during Plaintiffs' investigation from the files of a higher-level employee (Amazon's CFO, who Amazon continues to object to as a custodian in this litigation). *See* Amazon-FTC-CID_07679127 at -130 (describing employee's efforts to expand Amazon's Advertising business despite "challenges [that] remain as we push the envelope on monetization through increased prominence of placements, placement parity, and increasing placement density"). A collection from Amazon's centralized repository is necessary to ensure that personnel materials for custodians—who may be deponents and trial witnesses—are produced.

1 A party opposing discovery “has the burden to show that discovery should not be
 2 allowed, and has the burden of clarifying, explaining, and supporting its objections with
 3 competent evidence.” *Doe v. Trump*, 329 F.R.D. 262, 270 (W.D. Wash. 2018) (internal citations
 4 and quotations omitted). The party opposing discovery “cannot simply invoke generalized
 5 objections,” but instead “must show specifically how, despite the broad and liberal construction
 6 afforded the federal discovery rules, each request is not relevant or how each request is overly
 7 broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the
 8 nature of the burden.” *Sherman v. CLP Res., Inc.*, 2014 WL 12850524, at *2 (C.D. Cal. Sept. 10,
 9 2014) (internal quotation and citation omitted).

10 Amazon has not offered any explanation as to how searching a centralized repository for
 11 documents related to a discrete set of employees could be unduly burdensome. Plaintiffs
 12 respectfully request that the Court order Amazon to collect and produce personnel reviews,
 13 evaluations, and promotion materials from its centralized repository for all document custodians
 14 agreed upon by the parties or ordered by the Court. Plaintiffs further ask that the Court order
 15 Amazon to produce those documents for the individuals on Amazon’s current proposed
 16 custodian list no later than September 17, 2024.

17 **5. Discovery Correspondence from the California Action and Related Cases** 18 **and the Timing of Document Reproductions**

19 In the parties’ last status report, Plaintiffs flagged several disputes regarding Plaintiffs’
 20 requests for materials Amazon has produced in the *California* Action and Related Cases. *See*
 21 Dkt. #246 at 10-11. While Amazon has recently resolved several of those issues by agreeing to
 22 Plaintiffs’ requests, two disputes remain.

23 First, Amazon objects to producing all discovery correspondence from the *California*
 24 Action and Related Cases, which Plaintiffs have sought to expedite discovery negotiations and

1 Amazon's production of structured data.¹⁰ After months of discussions, Amazon has produced
2 select correspondence from the *California* Action and a summary of certain document
3 productions in that case. However, Amazon refuses to provide *all* discovery correspondence, on
4 the grounds that Plaintiffs' request seeks "piggyback discovery and discovery-on-discovery
5 materials that are not relevant to Plaintiffs' claims." Amazon also claims that Plaintiffs' request
6 is unduly burdensome but has not provided any support for that objection.

7 The discovery correspondence at issue is relevant here. The parties have agreed that the
8 subject matter of this case overlaps with the *California* Action and Related Cases. *See* Dkt. #135
9 (Dec. 12, 2023 JSR) at 38-39. As a result, the discovery correspondence from those cases is
10 highly likely to contain information that could inform and expedite the parties' discovery
11 negotiations here. The limited documents provided by Amazon have contained useful
12 information regarding non-custodial sources and custodians; it is likely that the documents
13 Amazon is withholding contain additional information that could let the parties make faster
14 progress in discovery. On another note, Amazon has repeatedly referred Plaintiffs to documents
15 Amazon is reproducing from the *California* Action, but Plaintiffs do not have the details of what
16 Amazon agreed to produce in that action, or insight into how any agreements with the California
17 Attorney General were reached.¹¹ While Amazon recently produced in mid-August a summary
18 description of certain *California* Action productions, Plaintiffs should not be forced to rely on
19 Amazon's second-hand narratives when the first-hand correspondence between Amazon and
20

21 ¹⁰ Plaintiffs' RFP No. 23 calls for: "All written correspondence between the parties in *People of*
22 *the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.) or any of the
Related Cases regarding discovery issues."

23 ¹¹ Plaintiffs cannot obtain this correspondence directly from the California Attorney General or
24 the plaintiffs in the Related Cases because Amazon routinely designates its discovery
correspondence as Highly Confidential or Confidential under the protective orders in those cases.

1 other parties is readily available. Amazon’s discovery correspondence regarding structured data
2 would be particularly useful. As an initial matter, those documents may identify sources of
3 relevant data that were discussed in other cases but ultimately not searched or produced. Those
4 documents also likely contain information Amazon provided in other cases to interpret and
5 explain certain structured data, which would eliminate the need for duplicative back-and-forth
6 questioning and could speed up the production of structured data in this case.

7 All of this correspondence can be readily collected and produced with minimal, if any,
8 burden. *See O.H. v. Secret Harbor*, 2024 WL 310281 at *1 (W.D. Wash., Jan. 26, 2024) (“As a
9 practical matter, if [Defendant] has already produced documents responsive to similar requests in
10 the state court proceedings (likely in electronic format), the burden of producing the same
11 documents in this lawsuit should be low.”). The documents Plaintiffs are seeking are almost
12 certainly in centralized files held by Amazon’s outside counsel, including outside counsel
13 representing Amazon in this case. Accordingly, Plaintiffs respectfully request that the Court
14 order Amazon to produce all discovery correspondence from the *California* Action and Related
15 Cases.

16 Second, Amazon has not responded to Plaintiffs’ request that Amazon produce any
17 further reproductions from the *California* Action and Related Cases within one week of their
18 initial production. Such an assurance is important because Amazon waited months before
19 reproducing earlier productions in the *California* Action. Plaintiffs do not believe that schedule
20 could be unduly burdensome, given that Amazon can plan for those productions. Plaintiffs
21 respectfully request that the Court order Amazon to make any reproductions from the *California*
22 Action or Related Cases within one week of their productions in those cases.

6. Economics Day

At the June 6, 2024 status conference, the Court proposed “a hearing where [the Court] would hear from both sides’ economists about the theories being advanced in this case,” with the goal of being “as educated as possible regarding the economic theories in this case.” June 6, 2024, Hr’g Tr. 4:14-24. The parties met and conferred, and then submitted competing proposals regarding the scope and protocol for that hearing. *See* Dkt. #263. Plaintiffs believe their proposed structure and ground rules for the hearing would best address the Court’s request. If the Court is still inclined to hold an Economics Day, Plaintiffs request that the Court set a date for that hearing in October or November 2024.

C. Plaintiffs’ Discovery Responses and Productions

In response to Amazon’s First Set of Requests for Production, Plaintiffs agreed to conduct a reasonable search of documents within their possession, custody, or control for responsive, non-privileged pre-Complaint documents from and communications with third parties related to Plaintiffs’ respective investigations. Plaintiffs substantially completed their agreed-upon productions of documents on May 24, 2024.

Amazon served its First Set of Interrogatories on Plaintiffs on July 30, 2024. Plaintiffs will serve their responses and objections on August 29, 2024.

D. Third Party Discovery

Plaintiffs have served 21 document subpoenas to online retailers, marketplaces, and third-party logistics providers, and will continue to issue additional subpoenas on a rolling basis as needed. Plaintiffs are also conferring with third-party subpoena recipients regarding the scope of their responses to Plaintiffs’ requests.

Plaintiffs participated in the depositions of two third-party witnesses who were initially noticed in the *California* Action. Plaintiffs have issued deposition subpoenas to five third-party

witnesses and are discussing other potential coordinated depositions with California and plaintiffs in certain Related Cases.

The parties have agreed to regular exchanges of information about subpoenas to third parties and third parties' responses and objections. The parties have also agreed to hold joint meet and confers when requested by third parties in order to minimize the burden of discovery for third parties.

IV. AMAZON'S REPORT ON THE STATUS OF DISCOVERY

A. Amazon's Responses to Plaintiffs' Written Discovery.

Amazon is actively and diligently responding to Plaintiffs' voluminous discovery requests. Plaintiffs air many "concerns" with the Court but their characterization of the dynamics of the parties' interactions elides important context that must be provided.

Plaintiffs' Disregard for Efficiency or Compromise. Plaintiffs have issued a total of 393 Requests for Production,¹² which seek voluminous documents in addition to the more than 1.7 million documents that Amazon produced to Plaintiffs during the four-year pre-Complaint investigation by the FTC and certain of the Plaintiff States. Those documents date back to 2016 and earlier, and have been deemed produced in this case. The parties have actively engaged in conferrals related to these 393 Requests. Since the last status conference alone, there have been more than 20 conferrals spanning over 31 hours, addressing over 170 different Requests for Production, all of Plaintiffs' interrogatories, and other discovery-related protocols such as privilege logging, the use of TAR, custodians, and search terms. Additionally, since the last status conference, Plaintiffs have sent Amazon approximately two dozen letters from a dozen

¹² At the time of the June Status Conference, Plaintiffs had issued 349 Requests for Production. On June 28, 2024, Plaintiffs issued a Fourth Set of Requests for Production with an additional 44 requests. Amazon responded to those, and the parties have discussed them in four conferrals to date.

1 different lawyers consisting of more than 200 single-spaced pages with additional questions,
2 requests, or arguments coming out of the conferrals. Amazon has responded to those letters after
3 consideration and investigation.¹³ The burden imposed by these efforts is difficult to overstate:
4 As a practical matter, Plaintiffs' approach has resulted in demands that Amazon simultaneously
5 investigate hundreds of questions without any effort by Plaintiffs to prioritize and without
6 apparent regard for the importance of the questions to the case or the present procedural posture.
7 In an effort to work cooperatively, progress the litigation forward, and avoid burdening the Court
8 with disputes, Amazon has sought to consider and investigate Plaintiffs' questions even when
9 doing so goes beyond Amazon's obligations in responding to particular Requests for
10 Production.¹⁴

11 Yet Plaintiffs will criticize Amazon even where Amazon has agreed to produce or has
12 answered the questions they asked. This criticism is unfounded, both generally and in the
13 specific examples they provide. First, Plaintiffs' discussion of the parties' negotiation on Supply
14 Chain by Amazon and Buy with Prime—about which Amazon has agreed to produce
15 documents—lacks context. Neither of these programs is mentioned in the Complaint, yet
16 Plaintiffs propounded roughly thirty Requests for Production that sought documents related to
17 them. Although Amazon maintained that these programs were not independently relevant to
18

19 ¹³ Plaintiffs state that at one point they were waiting for responses on eight outstanding letters,
20 but they fail to mention that Amazon had responded to the vast majority of the items in most of
21 those letters but was still investigating a few questions. They also fail to note that in the
preceding month Plaintiffs had sent fourteen letters totaling 86 pages. Meanwhile, it took
Plaintiffs five weeks to respond to a single three-and-a-quarter page letter from Amazon asking
questions about the productions Plaintiffs made.

22 ¹⁴ For example, Amazon invested substantial effort to prepare and draft data field definitions for
23 reproduced datasets, including in many instances where such definitions did not exist in the
ordinary course of business. Beyond identifying and producing the data, this required Amazon
24 to investigate with numerous individuals the meaning of various data fields purely for Plaintiffs' benefit.

1 Plaintiffs' claims, Amazon clarified months ago that its production would include documents
2 relating to Supply Chain by Amazon or Buy with Prime to the extent otherwise responsive and
3 relevant documents included information about those programs. Plaintiffs insisted on pursuing a
4 motion to compel on all of the RFPs. Amazon did not want to burden the Court with this dispute
5 and therefore agreed to search for and produce documents relating to those programs. It did not
6 concede the relevance of these programs to Plaintiffs' claims.

7 Second, Plaintiffs' complaint regarding Amazon's investigation into "other Amazon
8 ecommerce fulfillment services" seems to amount to a complaint that it took too long for
9 Amazon to get Plaintiffs an answer to one of the scores of questions Plaintiffs asked Amazon to
10 investigate in connection with their hundreds of document requests. In conferral on the issue of
11 what Plaintiffs sought by their reference to "other Amazon ecommerce fulfillment services,"
12 Plaintiffs explained that they tacked on "other" services as a catch-all to requests that named
13 specific fulfillment services in which they were interested. Amazon agreed to investigate the
14 existence of "other" services. Plaintiffs never signaled that this question was a priority over the
15 many others they asked, and they do not say so now either. In any event, Amazon provided a
16 response to this question nearly two months ago, and Plaintiffs have been silent on the issue
17 since that time.

18 **Targeted collections.** For several dozen of Plaintiffs' requests, Amazon has agreed to
19 targeted collections—i.e., Amazon has agreed to collect and produce specific documents (which
20 requires searching across many different units of Amazon's business), or to collect and
21 reproduce documents that Amazon produced in other related cases. Amazon has produced, on a
22 rolling basis, over 525,000 documents (totaling over three million pages) of these collections.
23 Amazon promised to begin producing these collections on a rolling basis on June 15, 2024, July
24 15, 2024, August 15, 2024, and September 15, 2024, and agreed to substantially complete

1 reproductions from other cases by July 1, 2024. As Amazon anticipated in the last Joint Status
2 Report, Amazon has not missed any of the anticipated targeted production or substantial
3 completion deadlines it provided in its responses to Plaintiffs' requests.

4 Plaintiffs downplay the importance of these productions, even though they affirmatively
5 sought them and repeatedly asked for updates regarding when they would receive them. They
6 now imply that Amazon's reproductions of materials produced in the *California* action and
7 Related Cases have little significance to Plaintiffs' ability to continue building their case in this
8 Action.¹⁵ But those materials provide Plaintiffs with over half a million additional documents
9 relating to many of Plaintiffs' allegations from many of the custodians Plaintiffs have proposed
10 in this action—meaning that Plaintiffs today have over 2.2 million documents from
11 Amazon. Indeed, 43 of the 58 custodians in the *California* action are custodians that Plaintiffs
12 seek to include in this action, and Plaintiffs therefore already possess a meaningful amount of
13 documents they would expect to be produced from these custodians. Meanwhile, Plaintiffs also
14 minimize the documents Amazon has produced in response to requests for targeted documents—
15 like key business planning documents, board materials, and financial information—by
16 suggesting that they are unimportant because the volume totals only around 3,000 documents.
17 But for targeted collections, it is not a game of quantity; the question is whether Plaintiffs get the
18 key, relevant documents that are the subject of that request, and the answer is yes: Amazon has
19 started producing, and in many instances finished productions for, over 50 of the 60 targeted
20 collections Amazon has agreed to make.

21 **Custodial collections.** For several hundred other requests, Amazon has agreed to
22 produce documents after it collects files from Amazon's current and former employees and runs

23 ¹⁵ At the same time, they move for an unnecessary order that these materials be produced on a
24 particular pace.

1 search terms over those files to narrow them down to materials that are responsive to the
2 Plaintiffs' document requests. Amazon also plans to use TAR to identify responsive documents,
3 pursuant to a protocol that is currently being discussed among the parties. The parties are in
4 active negotiations regarding the rest of the process for those custodial productions, including
5 discussions regarding custodians and search terms. Although the parties have different
6 perspectives on certain aspects of those negotiations, the parties are currently working through
7 those differences and Amazon hopes that continued work by both sides can resolve these
8 disputes without the Court's further involvement.

9 Three areas identified by Plaintiffs in their narrative—but not as disputes for the Court's
10 intervention—show how the parties have the opportunity to continue productive negotiations.

11 **TAR.** The parties have made substantial progress negotiating TAR since the last status
12 conference:

- 13 • The parties are near agreement on a final, detailed TAR protocol that will govern
14 Amazon's use of TAR in this matter.
- 15 • The parties are aligned on using search terms as an initial step to identify potentially
16 responsive documents for each custodian that will be put through a TAR workflow to
17 determine which are actually responsive.

18 The parties are still negotiating which search terms will be applied to create the subset of
19 documents that will be subject to the TAR review. Plaintiffs' current proposal returns some 15
20 million documents for 54 of the parties' agreed-upon custodians and would return an estimated
21 41 million documents if applied to all 148 of their proposed custodians. This raises two issues.

22 First, the volume of documents that would require human review is far too large.
23 Although Plaintiffs have asserted that TAR would effectively negate any burden arguments, that
24 is incorrect. TAR brings considerable efficiencies for both parties, but it is not a magic wand.

1 There will still be a substantial review component—perhaps on the order of 30% of documents
2 subject to the TAR workflow. At current volumes, no party can review the volume of documents
3 by Plaintiff’s proposed deadline of the beginning of next year. As discussed below, Amazon
4 proposes a reasonable path forward for refinement of the search terms.

5 Second, there are limits to the TAR tool’s ability to ingest such large document volumes.
6 In an effort to be transparent and ensure the efficient and orderly production of documents,
7 Amazon has raised this issue early and often throughout search term and TAR negotiations.
8 Amazon’s representations stem from its discovery counsel’s extensive experience in similar
9 matters, as well as the experience of its discovery vendor Consilio—one of the largest vendors in
10 the world with vast experience in complex cases. Plaintiffs have largely dismissed these
11 technological concerns, while failing to have individuals with substantive TAR experience on the
12 meet and confer discussions, relaying performance claims from an unidentified sales
13 representative, and suggesting engineering solutions based on information found through online
14 searches.¹⁶

15 Plaintiffs have suggested that the parties may be able to agree on a set of search terms
16 that will result in a volume of documents that will not implicate our concerns. Amazon is
17 hopeful that the parties can reach such an agreement. At that point, disagreements over the TAR
18 tool’s theoretical limits would become moot.

21 ¹⁶ Plaintiffs cite three cases where somewhat more than 9 million documents were reviewed by
22 defendants. It is unclear from our review of the docket whether any of the parties used
23 Brainspace (the TAR tool at issue here) or a TAR 2.0 review, as the parties contemplate here.
24 Moreover, those cases appear to have allotted considerably more time to complete document
review than the roughly four-month period proposed by Plaintiffs. *See, e.g., In re Domestic
Airlines Travel Antitrust Litig.*, No. 1:15-mc-1404, Dkt. #152, (D.D.C. Jan. 30, 2017); *id.* #207
(Feb. 14, 2018) (extending timeline for “core document production” to a 15-month period).

1 ***Search Terms.*** Based on its due diligence, Amazon proposed over 200 search terms to
2 be used to search the documents of 54 custodians¹⁷ likely to have responsive documents. In
3 contrast, Plaintiffs proposed over 1,100 search terms across 148 custodians.¹⁸ Amazon has
4 informed Plaintiffs that Plaintiffs' proposed terms, when run only against the 54 custodians
5 Amazon initially proposed (as opposed to the 148 proposed by Plaintiffs), hit on a massive
6 population of 15 million documents.

7 Despite these differences, Amazon has proposed a way forward: In an August 8 letter,
8 Amazon asked that Plaintiffs consider whether any of the 200 general terms they propose to run
9 against all custodians—terms like “Microsoft,” and “Jesus” that Plaintiffs proposed be run
10 without limiters—can be deleted or adjusted, while Amazon works with the approximately 900
11 subject matter-specific terms Plaintiffs have suggested to see if there is a middle ground that can
12 be reached. In that letter, Amazon raised several different types of concerns with the 200 general
13 terms, and provided examples; those concerns were not solely related to burden. Plaintiffs did
14 not respond to Amazon's proposed approach for bringing the parties together until the parties
15 discussed it on an August 22 conferral. In that call, Plaintiffs refused to commit to reconsidering
16 their general terms, and argued that they could not assess those items without hit counts.

17 Amazon challenged the premise that Plaintiffs could not reconsider whether terms like Jesus or
18 Microsoft could be reconsidered based solely on their facial lack of connection to the case, and
19 asked Plaintiffs to work together with Amazon to get the parties closer. Given the high-level
20 concerns Amazon had with Plaintiffs' approach, Amazon also proposed the parties begin to
21 exchange hit counts once their approaches were in the same ballpark and committed to including

23 ¹⁷ Amazon has agreed to 59 custodians as of this JSR.

24 ¹⁸ Plaintiffs have made almost no attempt to engage with Amazon's terms; in many cases, they
just added those terms on top of the terms they have proposed.

1 hit counts for its anticipated counter-proposal to the subject matter-specific terms. After
2 Plaintiffs refused to engage in any negotiation without hit counts for their facially overbroad and
3 problematic terms, Amazon agreed to provide hit counts for those terms too. On August 27,
4 Plaintiffs agreed that they would reconsider the general terms. Amazon anticipates sending back
5 its counter-proposal for the approximately 900 subject matter terms by August 30. Amazon's
6 hope is that if the parties work together on more focused terms, they can get the hit count into an
7 acceptable range for TAR to function appropriately while also capturing the documents Plaintiffs
8 have requested.

9 ***Date Range.*** The parties continue to discuss but have not yet fully agreed on the relevant
10 date range that will govern the productions: Plaintiffs seek production of documents responsive
11 to all requests dating back to 2014. Amazon proposes that the proper date range should
12 generally begin at January 1, 2016. This is the date range that corresponds to the vast majority of
13 the events and practices alleged in the Complaint. To the extent that an earlier date range is
14 appropriate for specific topics or issues, Amazon has agreed to produce documents from earlier
15 years, and it is willing to discuss specific issues for which an earlier date range would be
16 appropriate. Amazon and Plaintiffs continue to negotiate the date range.

17 **B. Plaintiffs' Disputes Regarding Amazon's Discovery Responses and**
18 **Productions**

19 ***1. Plaintiffs' Request for Interim Discovery Deadlines and a Deadline***
20 ***for Amazon to Substantially Complete Document Productions by the***
21 ***Beginning of Next Year***

22 Plaintiffs ask the Court to implement interim discovery deadlines, including a deadline
23 for Amazon to substantially complete document production by the beginning of next year.

24 Amazon shares Plaintiffs' interest in completing discovery efficiently, and has been diligently

1 producing documents and electronic data for months. But at this stage, interim deadlines are not
2 feasible and would not be effective. As noted above, although the parties have been working in
3 good faith, they have not yet agreed on custodians, search terms, and time periods, which will be
4 the key drivers of the scope of the document production. The date range, search terms, and
5 number of custodians currently proposed by Plaintiffs would make meeting a substantial
6 production deadline over a roughly four-month period impossible. Because the time needed to
7 complete a document review depends on the number of documents that need to be reviewed,
8 setting a deadline for substantial completion at this stage puts the cart before the horse. Amazon
9 has told Plaintiffs numerous times that it is willing to discuss interim discovery guidelines once
10 the parties have a sense of the scope of the review.

11 Amazon does not believe that interim deadlines will improve the parties' negotiations,
12 and would not impose them at this time. But if the Court views interim deadlines as necessary,
13 Amazon would request the parties meet and confer and propose deadlines that encourage both
14 parties to take reasonable positions.¹⁹ Amazon further requests that any interim deadlines be
15 subject to revision by written agreement of the parties in order to avoid unnecessary involvement
16 of the Court in the event the parties need additional time.

17 ***2. Request for More Frequent Status Conferences***

18 Plaintiffs request that the Court hold status conferences every two months, instead of
19 every three months. Amazon believes that the Court's current cadence of quarterly status
20 conferences, as set forth in the Case Management Order, is appropriate. Dkt. 161, ¶ 1. To the
21 extent more frequent conferences would be driven solely by Plaintiffs' perception of the pace of
22

23
24 ¹⁹ Plaintiffs' proposal would place no incentive on Plaintiffs to be reasonable. It would require Amazon to be bound by the deadline but allow Plaintiffs the opportunity to request more.

discovery in this matter, Amazon maintains that the parties are capable of continuing to resolve and negotiate disputes without more frequent court intervention.

The parties have made substantial progress on negotiating the scope of Amazon's responsive discovery to date. The parties have reached substantial agreement about what the material scope of production should be in this matter, and given that agreement, the parties are in a position to work together on reaching substantial agreement on search terms and custodians.²⁰

3. *Non-Custodial ESI Sources*

Plaintiffs assert that Amazon has failed to comply with the ESI Order's requirement to disclose non-custodial data sources. That is incorrect:

- On June 20, 2024, Amazon disclosed a list of 20 custodial and non-custodial data sources and categories of data sources to Plaintiffs.
- Amazon has since engaged with Plaintiffs' questions regarding Amazon's disclosure and provided clarification on the search strategy for certain data sources, including Quip, SharePoint, Workdocs, Amazon Drive, and Home Drive.
- During a meet and confer on August 23, 2024, Amazon agreed to provide by August 30 an updated disclosure, at Plaintiffs' request, with additional information, including (1) whether a data source is custodial or non-custodial; and (2) for non-custodial data

²⁰ As Plaintiffs indicate, there is no ripe issue for the Court on structured data. In its responses and objections to Plaintiffs' requests for production, Amazon already provided estimated production deadlines for a substantial number of data productions, on a rolling basis from August 2024 through February 2025—almost six months prior to the fact discovery deadline. Amazon began substantial data productions as soon as the parties' S3 production methodology was resolved in July 2024. For other data requests that required further investigation and clarification from Plaintiffs, Amazon has now agreed to provide additional estimated rolling production deadlines. As it has in the past, Amazon will continue to cooperate and negotiate in good faith with Plaintiffs to provide data on a rolling basis (having already produced or offered to produce over 200 TB), to provide data samples or data fields, where appropriate, and to provide data sufficiently in advance of the final fact discovery deadline.

1 sources, whether Amazon believes the data source is likely to contain discoverable
2 information.

3 Plaintiffs have also expressed concerns regarding whether Amazon conducted a
4 reasonable search for non-custodial data sources. This appears to be largely—if not entirely—
5 based on Plaintiffs’ identification of additional data sources it claims that Amazon failed to
6 initially disclose. Amazon has explained that two of the data sources raised by Plaintiffs are
7 custodial rather than non-custodial—and, therefore, not subject to the ESI Order’s requirement to
8 disclose *non-custodial* data sources. The remaining data source was disclosed *by Amazon* during
9 the RFP negotiation process. Moreover, Amazon has proposed a search and collection strategy
10 for all three of these and has otherwise attempted to answer questions raised by Plaintiffs.

11 Amazon has also committed to disclosing any additional data sources it identifies as the
12 parties continue to scope responses to Plaintiffs’ overly broad requests for production and
13 expressed a willingness to discuss any additional sources that Plaintiffs may identify through
14 their own review of the voluminous discovery in their possession.

15 This is the process working as intended. Amazon does not believe that the Court’s
16 intervention is warranted here.

17 **4. Personnel Review Files**

18 Plaintiffs ask this Court to order Amazon to produce personnel review files for every
19 custodian the parties agree to or the Court orders. The Court should deny that request.

20 First, Amazon is surprised Plaintiffs chose to bring this issue to the Court without even
21 following up on their own suggestion that perhaps Amazon could consider a narrower list of
22 personnel files—or mentioning Amazon’s agreement to do so over a month ago. The parties
23 have met and conferred about this request twice: first, on April 10, and then, after nearly three
24 months without Plaintiffs seeking to meet again on the topic, on July 26. During those

1 discussions, Amazon explained to Plaintiffs that these materials are extremely sensitive
2 (including within Amazon itself, which treats these as highly confidential) and of marginal
3 relevance, and that Plaintiffs’ purported justification for needing them—to help them identify
4 relevant company goals, and Amazon’s progress in achieving those goals—would be better
5 satisfied in myriad other documents Plaintiffs will receive in custodial files from Amazon’s
6 decisionmakers. But Amazon committed that it would produce any personnel review found in
7 custodial files that hit on Plaintiffs’ search terms and was deemed responsive for their
8 substantive requests (i.e., their requests for documents related to subject matters). And Amazon
9 *also* confirmed in writing that it would, as Plaintiffs requested, “consider a proposal from
10 Plaintiffs for a limited, targeted proposal of specific individuals whose personnel reviews
11 Plaintiffs seek.” Aug. 16, 2024 Ltr. from K. Trefz to C. Herd, at 3. Despite sending several
12 letters to Amazon after its August 16 memorialization of that offer (originally made orally over a
13 month ago), Plaintiffs have not provided any response to Amazon. It is disappointing that
14 Plaintiffs refuse to negotiate with Amazon regarding these highly sensitive documents that are of
15 minimal additive value.

16 Second, Plaintiffs’ request should also be denied on the merits. These files—which
17 Plaintiffs have requested regardless of the substantive topic they cover—have minimal
18 independent relevance. Plaintiffs’ purported justification for seeking the files is that they will
19 help identify Amazon’s company goals and an employee’s acts in furtherance of those goals.
20 But other documents Plaintiffs will receive (or already have received) are much better for this:
21 company planning documents, business updates, and the custodial files that reflect the employees
22 taking the actions will be a far better source of that information than any post-hoc, cursory write-
23 up in a personnel review. And Plaintiffs’ demand for these files is not limited by subject matter;
24 in other words, Plaintiffs seek an employee’s reviews regardless of whether they discuss

1 company goals, on the theory that they *might*. This is a classic fishing expedition that seeks to
2 wade through extremely personal, sensitive documents.

3 To be clear, if these documents hit on search terms and discuss relevant topics, Plaintiffs
4 will get these documents through custodial files, just as they did during their pre-Complaint
5 investigation. Amazon confirmed in writing that many such personnel reviews and promotional
6 evaluations are indeed in those files, and it has confirmed that it will produce personnel files that
7 hit on the search terms and address one of the many topics at issue in the case. If Plaintiffs are
8 correct that those reviews discuss Amazon’s substantive goals, they will undoubtedly hit on the
9 substantive search terms the parties agree on. Given the sensitivity of these files, their limited
10 and duplicative relevance, and that Plaintiffs will otherwise get relevant documents through other
11 means, the Court should deny Plaintiffs’ request.

12 ***5. Discovery Correspondence from the California Action and Related***
13 ***Cases and Timing of Document Reproductions***

14 Plaintiffs ask the Court to order that Amazon produce all its correspondence related to
15 discovery in the *California* action and the Related Cases, and to reproduce all documents
16 produced to Amazon in those cases on a rolling basis, within one week of Amazon having
17 received them. The Court should decline in both respects.

18 ***The Correspondence.*** Plaintiffs’ Request No. 23 seeks from Amazon’s lawyers all
19 discovery correspondence—every letter and email Amazon’s lawyers have sent or received—in
20 the *California* case and Related Cases. This information would primarily be in the possession of
21 Amazon’s outside counsel who handle those cases. Throughout the parties’ conferrals over a
22 period of six months and here in the JSR, Plaintiffs have identified just two purposes for seeking
23 this material: they would like to understand the scope of Amazon’s reproductions from other
24 cases and would like to use them to “expedite” discovery negotiations (though they do not say

1 how or regarding which issue the parties are negotiating). In response to those purported
2 reasons, Amazon provided a collection of material that directly answered Plaintiffs' questions: 1)
3 the search terms and custodians it agreed to run in the *California* case; 2) a list of all targeted
4 productions Amazon agreed to in the *California* case; and 3) a collection of discrete requests for
5 production and correspondence regarding those collections. Additionally, whenever Plaintiffs
6 had a specific question regarding a given reproduction, Amazon provided a detailed answer and
7 has committed to continuing to do so. These materials are more helpful to understanding the
8 reproductions than the discovery correspondence itself would be; as is often the case in complex
9 matters, the exchanges between Amazon and its counterparties are both voluminous and
10 incomplete in that they do not capture the many oral conferrals that also occurred. Nevertheless,
11 Plaintiffs claim these direct answers to their questions are insufficient and insist they want every
12 email and other piece of correspondence between Amazon and the California Attorney General.
13 But they have never explained what information is missing that they need to understand the
14 productions.

15 These materials are not independently relevant to Plaintiffs' claims or Amazon's
16 defenses, and Plaintiffs do not attempt to argue otherwise. Instead, Plaintiffs' request constitutes
17 a clear attempt to obtain discovery on discovery, which is "disfavored," "closely scrutinized,"
18 and generally permitted only "where there is some indication that a party's discovery has been
19 insufficient or deficient." *Anstead v. Va. Mason Med. Ctr.*, 2022 WL 1641425, at *5 (W.D.
20 Wash. May 24, 2022). Rather than try to satisfy this standard to demonstrate a need for such
21 disfavored discovery, Plaintiffs merely bemoan that they "should not be forced to rely on
22 Amazon's second-hand narratives when the first-hand correspondence between Amazon and
23 other parties is readily available." While that clearly does not provide "some indication that
24 [Amazon's] discovery has been insufficient or deficient" such that Plaintiffs are entitled to this

1 correspondence, it is also incorrect as a matter of fact. The first-hand correspondence would be
2 *less useful* for Plaintiffs' purported purpose and this discovery is *not* readily available: collecting
3 and producing all discovery correspondence would be deeply burdensome due to its sheer
4 volume, the number of outside attorneys involved, and confidentiality issues involving third
5 parties. Given the nebulous relevance and utility here, the associated burden is unwarranted.
6 The Court should deny this request.

7 ***The Timing of the Reproductions.*** It is unclear why Plaintiffs believe Court intervention
8 is necessary with respect to reproductions from other cases that Plaintiffs have timely received
9 and will continue to receive (as discovery in the other actions is ongoing). Amazon substantially
10 completed providing the materials available for reproduction to Plaintiffs on July 1, 2024. In the
11 weeks thereafter, Amazon has completed further rolling reproductions for additional documents
12 still being produced. Plaintiffs have not expressed to Amazon any dissatisfaction as to the timing
13 of Amazon's reproductions since July, other than making general inquiries about what remained
14 to be produced. Most of the materials that Amazon has not yet reproduced are ones that were
15 subject to an ongoing dispute between the parties that was resolved on August 14, 2024.
16 Amazon has already queued the remaining *California* materials for reproduction.

17 To the extent the Court agrees a deadline for reproductions is warranted, one week is
18 impracticable for the reasons Amazon noted in its response to Plaintiffs' Motion to Enter an ESI
19 Order. ECF No. 191 at 3-4. Each step of the reproduction process—ingesting the documents,
20 porting them from the document databases in the respective cases to Amazon's document
21 database for this case, preparing them for production, and providing them to Plaintiffs here—is a
22
23
24

1 process that can take several days at best, and much longer for sizable productions.²¹ If the
2 Court believes an order is necessary, it should order the parties to reproduce materials using
3 reasonable best efforts as soon as is practicable. To be clear, Amazon is already complying with
4 that standard.

5 **6. Economics Day**

6 As set forth in its submission as part of the June 27 Statement Regarding Proposed
7 Economics Day Hearing, Amazon believes that initial presentations in the Fall by counsel on the
8 economics issues of primary interest to the parties and the Court, followed by subsequent
9 presentations by proffered experts after expert reports have been exchanged, would be most
10 beneficial and would provide the Court with background and substance regarding how the
11 economic issues in the case interplay with the legal theories pled by Plaintiffs. Amazon looks
12 forward to addressing any questions the Court has regarding the parties' proposals at the Status
13 Conference.

14 **C. Plaintiffs' Responses to Amazon's Written Discovery**

15 As noted in the last status conference, Amazon served its First Set of Requests for
16 Production to each Plaintiff on November 14, 2023. Those requests sought, inter alia, materials
17 comprising Plaintiffs' pre-Complaint investigation, including communications with and
18 documents from third parties. Plaintiffs served their Responses and Objections on December 14,
19 2023. The parties deferred discussion about Amazon's other requests until after the investigative
20 file was produced. On May 24, 2024, Plaintiffs represented that their production of responsive
21 documents and third-party productions were substantially complete. In a July 10 letter, Amazon

22 ²¹ Plaintiffs insist that this can be mitigated because Amazon "can plan for those productions."
23 But the delays are not in planning, they are in processing the materials, which cannot begin until
24 the materials have been produced in the original action, and cannot be mitigated by mere
planning ahead.

1 asked for further information about Plaintiffs' production and collection efforts. Plaintiffs
2 responded to that letter on August 19. Amazon is in the process of assessing Plaintiffs' response.

3 Amazon also served its First Set of Interrogatories to each Plaintiff on July 30, 2024.
4 Plaintiffs' Responses and Objections are due August 29, 2024. Amazon expects those responses,
5 Plaintiffs' productions and collection efforts, and Amazon's outstanding requests to be the
6 subject of future meet and confers. Amazon does not request any Court action on these issues at
7 this time.

8 **D. Third Party Discovery**

9 Amazon and Plaintiffs continue to seek discovery from third parties. Since the parties
10 submitted the June 3, 2024 Joint Status Report, Amazon has served 15 additional non-party
11 subpoenas seeking documents from competing retailers, fulfillment and logistics providers, and
12 brand aggregators. Amazon is in the process of conferring with those parties to reach agreement
13 on the documents to be produced in response to Amazon's requests. Amazon expects to serve
14 non-party document subpoenas on additional third parties, including additional retail
15 competitors, fulfillment and logistics providers, and other market participants.

16 The parties continue to regularly exchange information about subpoenas issued to third
17 parties as well as third parties' responses and objections. The parties have also held joint meet
18 and confers when requested by third parties to minimize the burden on those parties.

19 Regarding third-party depositions, since the June 3 Joint Status Report, two third-party
20 depositions were taken, and Amazon has informed Plaintiffs that the California Attorney General
21 has noticed a deposition in the *California* action of a competing retailer to occur in late fall 2024.
22 Amazon will work with Plaintiffs to allow for a coordinated deposition of that non-party and any
23 other non-party depositions that will be noticed in that action. Plaintiffs in this action have
24 noticed 5 non-party depositions, and Amazon has informed the Plaintiffs in related cases of the

noticed dates to facilitate coordination of the depositions. Amazon continues to expect that most of the non-party depositions in this case will occur in late 2024 and early 2025.

V. OTHER ISSUES

The parties are continuing to meet and confer regarding a draft protocol for the coordination of depositions between this case, the *California* Action, and certain Related Cases. Amazon awaits Plaintiffs' response to issues discussed on an August 13, 2024 meet and confer, which will likely identify any issues that remain in dispute. The parties are also continuing to meet and confer regarding the scope of privilege logging, pursuant to the Court's June 11, 2024 Order. *See* Dkt. #256.

VI. PENDING MOTIONS

The chart below lists the motions that are pending before the Court:

Motion	Response	Reply	Notice Date
Amazon's Motion to Dismiss for Failure to State a Claim (Dkt. #127) (12/8/2023)	Plaintiffs' Response (Dkt. #149) (2/6/2024) Notice of Supplemental Authority (Dkt. #267) (8/9/2024) Notice of Supplemental Authority (Dkt. #272) (8/23/2024)	Amazon's Reply (Dkt. #178) (3/22/2024) Objection to Notice of Supplemental Authority (Dkt. #271) (8/19/2024)	March 22, 2024
Plaintiffs' Motion to Bifurcate (Dkt. #167) (2/29/2024)	Amazon's Response (Dkt. #168) (3/11/2024)	Plaintiffs' Reply (Dkt. #173) (3/15/2024)	March 15, 2024; ruling deferred by March 18, 2024 order (Dkt #176)

1 Dated: August 28, 2024

Respectfully submitted,

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